Supreme Court, U.S.
FILED
DEC 27 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-2117

In the Supreme Court of the United States

OCTOBER TERM, 1989

INCOME SECURITY CORPORATION, INC., ET AL., PETITIONERS

v.

LOUISIANA OILFIELD CONTRACTORS ASSOCIATION, INC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

The district court enjoined a state court action against two alleged fiduciaries of an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (ERISA), and the court of appeals reversed on the ground that the injunction was prohibited by the Anti-Injunction Act, 28 U.S.C. 2283. The question presented is whether the entry of the injunction was contrary to that Act, or whether it fell within the exception for injunctions "expressly authorized by Act of Congress."

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This brief is submitted in response to the Court's invitation to the Solicitor General to express the views of the United States.

STATEMENT

Respondent Louisiana Oilfield Contractors Association established a group health plan in 1981. Under the Plan, participating employees of companies that belonged to the Association and contributed to the Plan's trust fund obtained reimbursement for medical expenditures. Petitioner Income Security Corporation, Inc., whose president is petitioner Gary Felton, contracted to perform administrative services for the Plan. Among their duties, petitioners were to estimate the cost of claims that would be filed in the Plan's first year and obtain adequate stop-loss insurance to reimburse the Plan after it paid claims beyond a certain dollar amount (the "aggregate attachment point"). The amount the Plan charged participating employers and

employees was determined by adding the anticipated claims that the Plan itself would pay, the cost of stop-loss insurance, and anticipated administrative costs. Pet. App. 7a-10a.

In 1982 and 1983, the Plan experienced a mounting deficit due to its failure to charge and receive a sufficient amount of money from participating employers and employees. The Plan's trustees blamed petitioners for the underfunding, and in 1984 commenced a civil action against them in state court.[1] The Plan alleged that, because of the underfunding, it had been unable to pay all claims. In addition, the Plan claimed that it had been unable to pay enough claims to reach the aggregate attachment point, and therefore the stop-loss insurance had not taken effect. The Plan's complaint alleged various contract and tort claims under state law. In early 1986, the Plan amended its complaint to add an allegation that petitioners had incurred liability as fiduciaries under the Employee Retirement Income Security Act of 1974 (ERISA). Pet. App. 10a-11a, 14a-15a.

In July 1986, petitioners brought this suit in federal district court against the Plan and its trustees. They asked the court to declare all the rights, duties, and obligations of the parties, and to stay all further state court proceedings on the ground that the state court lacked jurisdiction. Pet. App. 15a.[2] More specifically, petitioners contended that the

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[1] Initially, there were two civil actions: one by the Plan and affiliated parties and another by Dwight W. Andrus Insurance, Inc., which had helped formulate the Plan and had engaged petitioners to assist in that process. The state court defendants included petitioners, Harbor Insurance Co. (the reinsurance agent), and US Benefits, Inc. (the underwriting manager and intermediary for Harbor in connection with the reinsurance agreement). The state court consolidated the two actions. Pet. App. 11a.

[2] After the federal court action commenced but before the district court ruled, the Plan again amended its state court complaint to delete all references to ERISA. Pet. App. 15a.

Plan's state law claims were preempted by 29 U.S.C. 1144(a), which states that ERISA "supersede[s] any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." With respect to the Plan's ERISA claim, petitioners noted that 29 U.S.C. 1132(e) provides that the federal courts have exclusive jurisdiction over claims alleging breaches of fiduciary duties.[3]

The district court held in favor of petitioners. Pet. App. 4a-42a.[4] It concluded (*id.* at 38a) that "[t]he restated petitions filed in state court * * * essentially allege breaches of fiduciary duty owed to an ERISA-governed employee benefit plan by entities engaged to perform contractual services for that plan. To the extent based on state law, these claims are clearly preempted. To the extent they are based on federal law, the federal courts have exclusive jurisdiction over the matter." The court issued a declaration to that effect (*id.* at 39a-40a) and, without consideration of the Anti-Injunction Act, 28 U.S.C. 2283, enjoined continuation of the state court proceedings (Pet. App. 41a).[5]

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[3] State and federal courts have concurrent jurisdiction over claims for employee benefits, but the federal courts have exclusive jurisdiction over other claims arising under ERISA. 29 U.S.C. 1132(e).

[4] The district court based its jurisdiction primarily on 29 U.S.C. 1132(a)(2), which provides that parties may seek "appropriate relief under section 1109" (which governs "liability for breach of fiduciary duty").

[5] In a subsequent decision (Pet. App. 43a-54a), the court further declared the rights and liabilities of the parties. It held that the claim against petitioners for breach of their fiduciary duties under ERISA was barred by the three-year statute of limitations in 29 U.S.C. 1113(a)(2). Pet. App. 53a. Specifically, the court determined that the trustees had actual knowledge of petitioners' alleged breach of their fiduciary duties at least by May 1983, when the trustees met to discuss the Plan accountant's finding of serious underfunding, since the trustees placed the blame for the underfunding on petitioners at that

The court of appeals, in an unpublished decision, vacated and remanded. Pet. App. 1a-3a. It concluded that "the district court correctly held that subject-matter jurisdiction was vested in that court to the exclusion of any state court." *Id.* at 2a. However, the court found that the district court had erred by enjoining the state court proceeding. The court of appeals based its decision on *Texas Employers' Ins. Ass'n* v. *Jackson*, 862 F.2d 491 (5th Cir. 1988) (en banc), cert. denied, 109 S. Ct. 1932 (1989), which held, in the context of the Longshore and Harbor Workers' Compensation Act, that "the Anti-Injunction Act * * * bars a federal district court from enjoining a pending state court action even where, as here, 'federal preemption or interference with a federally protected right * * * is unmistakably clear.' " Pet. App. 2a (quoting 862 F.2d at 504). Furthermore, again relying on *Texas Employers' Ins. Ass'n*, the court ruled that declaratory relief was inappropriate because it had the same effect as an injunction on the state court proceedings. Pet. App. 2a-3a.

DISCUSSION

1. The court of appeals correctly held that the district court erred by enjoining the state court action. The Anti-Injunction Act, 28 U.S.C. 2283, provides that "[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." The

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time. Pet. App. 48a-50a. The court further determined that the filing of the state court actions did not toll the running of the limitations period, and that the trustees could not invoke the principle of equitable tolling because petitioners had not induced them to sleep on their federal rights. *Id.* at 50a-53a.

Act,[6] which dates in some form to 1793, is "a necessary concomitant of * * * a dual system of federal and state courts," and represents "a general policy under which state proceedings 'should normally be allowed to continue unimpaired by intervention of the lower federal courts, with relief from error, if any, through the state appellate courts and ultimately [the Supreme] Court.' " *Chick Kam Choo* v. *Exxon Corp.*, 108 S. Ct. 1684, 1689 (1988) (quoting *Atlantic Coast Line R.R.* v. *Locomotive Engineers*, 398 U.S. 281, 287 (1970)). "By generally barring such intervention, the Act forestalls 'the inevitable friction between the state and federal courts that ensues from the injunction of state judicial proceedings by a federal court.' " *Chick Kam Choo*, 108 S. Ct. at 1689 (quoting *Vendo Co.* v. *Lektro-Vend Corp.*, 433 U.S. 623, 630-631 (1977) (plurality opinion)).

The Act thus expresses "a clear-cut prohibition qualified only by specifically defined exceptions." *Amalgamated Clothing Workers* v. *Richman Bros.*, 348 U.S. 511, 516 (1955). Moreover, "the exceptions are narrow and are 'not [to] be enlarged by loose statutory construction.' " *Chick Kam Choo*, 108 S. Ct. at 1689 (quoting *Amalgamated Clothing Workers*, 348 U.S. at 514). "Any doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed in an orderly fashion to finally determine the controversy." *Atlantic Coast Line R.R.*, 398 U.S. at 297; see also *Amalgamated Clothing Workers*, 348 U.S. at 514 ("Congress made clear beyond cavil that the prohibition is not to be whittled away by judicial improvisation.").

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[6] Congress adopted the present wording of the Act when it enacted Title 28 of the United States Code in 1948. See *Amalgamated Clothing Workers* v. *Richman Bros.*, 348 U.S. 511, 514-515 (1955).

Petitioners contend that the stay issued by the district court in this case falls into the exception to the Act for injunctions "expressly authorized" by "Act of Congress." They rely on *Mitchum* v. *Foster,* 407 U.S. 225, 237 (1972), where the Court noted that the exception requires neither specific reference to the Anti-Injunction Act nor express authorization of an injunction of state court proceedings. Rather, the Court said, "[t]he test * * * is whether an Act of Congress, clearly creating a federal right or remedy enforceable in a federal court of equity could be given its intended scope only by the stay of a state court proceeding." *Id.* at 238.

As an initial matter, it is clear that the exception for injunctions "expressly authorized" by "Act of Congress" does not apply merely because the Plan's state law claims are preempted and the federal courts have exclusive jurisdiction over its ERISA claim. This Court assumed that the state court lacked jurisdiction in *Amalgamated Clothing Workers* (348 U.S. at 514), but nevertheless held that the Anti-Injunction Act barred an effort to stay the state proceedings. In such a case, the Court stated, the proper remedy is for the defendant to argue to the state court that it lacks jurisdiction. *Id.* at 518. Likewise, in *Atlantic Coast Line R.R.* the Court reiterated that the Anti-Injunction Act cannot be evaded "merely because [the state] proceedings interfere with a protected federal right or invade an area pre-empted by federal law, even when the interference is unmistakably clear." 398 U.S. at 294. Again, it explained that the proper course is to seek vindication of the federal rights in the state courts, subject to ultimate review by this Court. *Id.* at 296; accord *Chick Kam Choo,* 108 S. Ct. at 1691 ("when a state proceeding presents a federal issue, even a pre-emption issue, the proper course is to seek resolution of that issue by the state court"). Thus, even a broadly preemptive statute such as ERISA

can "be given its intended scope" other than "by the stay of a state court proceeding" (*Mitchum*, 407 U.S. at 238) since the state courts can decide that they lack jurisdiction.[7]

ERISA is therefore not analogous to 42 U.S.C. 1983, the statute at issue in *Mitchum*. In that case, the owner of a bookstore, relying on Section 1983, sought to enjoin state court proceedings seeking to close down his store as a nuisance. The Court held that injunctions against state court actions are permissible under Section 1983, despite the Anti-Injunction Act, since Section 1983 had been enacted specifically because Congress doubted the willingness and ability of state courts to protect federal rights. The Court stressed that "[p]roponents of the legislation noted that state courts were being used to harass and injure individuals, either because [they] were powerless to stop deprivations or were in league with those who were bent upon abrogation of federally protected rights." 407 U.S. at 240.[8] The legislative history of ERISA demon-

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[7] This Court did hold, in *Bowles* v. *Willingham*, 321 U.S. 503, 510-511 (1944), that a wartime grant of exclusive jurisdiction to a particular federal court, coupled with statutory authority to grant injunctive relief, constituted an exception to the prohibition of the Anti-Injunction Act. We do not believe that the *Willingham* decision is controlling here, however; that case was decided before *Amalgamated Clothing Workers, Atlantic Coast Line*, and *Vendo Co.*, and the state court action in that case—to enjoin the issuance of a rent order under the Emergency Price Control Act—was a far more direct challenge to authority conferred only on a federal court than the state court action here.

[8] The Court quoted a Senator who had stated that " '[i]f the State courts had proven themselves competent to suppress the local disorders, or to maintain law and order, we should not have been called upon to legislate,' " and a Representative who had supported Section 1983 because " '[a]mong the most dangerous things an injured party can do is to appeal to justice.' " 407 U.S. at 240-241 (quoting Cong. Globe, 42d Cong., 1st Sess. 653 (1871) (statement of Sen. Osborn) and *id.* at App. 78 (statement of Rep. Perry)).

strates no comparable doubts. Indeed, Congress gave concurrent jurisdiction over benefit claims to the state courts. It reserved cases involving breaches of fiduciary duty to the federal courts only because it concluded that, on account of "the interstate character of employee benefit plans," it was "essential to provide for a uniform source of law" to govern fiduciaries. S. Rep. No. 127, 93d Cong., 1st Sess. 35 (1973); H.R. Rep. No. 533, 93d Cong., 1st Sess. 17 (1973).

Furthermore, contrary to petitioners' suggestion (Pet. 15), authority to enjoin state court proceedings is not conferred by 29 U.S.C. 1132(a)(2) or (a)(3). Section 1132(a)(3) expressly authorizes fiduciaries of employee benefit plans to seek "to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan." Thus, Section 1132(a)(3) is intended, for example, to allow a fiduciary to obtain an injunction ordering an employer to make payments in accordance with the terms of the governing plan. Petitioners did not seek such an injunction. Rather than seeking to remedy a violation of the statute or a term of a plan, they seek to enjoin a state court action against them. "Conspicuously absent from the language of this ERISA injunction provision is any suggestion of its use by federal courts against state tribunals." *United States Steel Corp. Plan for Employee Ins. Benefits* v. *Musisko,* 885 F.2d 1170, 1177 (3d Cir. 1989).

Moreover, in *Vendo Co.* v. *Lektro-Vend, supra,* the Court rejected the suggestion that Section 16 of the Clayton Act, 15 U.S.C. 26, which authorizes injunctive relief for violations of the antitrust laws, overrides the Anti-Injunction Act, even though the plaintiff there alleged that the state court action was brought as part of an anticompetitive conspiracy. The plurality explained that if Section 16 were construed to authorize injunctions of state court actions, then the Anti-Injunction Act "would be

completely eviscerated since the ultimate logic of this position can mean no less than that virtually *all* federal statutes authorizing injunctive relief are exceptions to § 2283." 433 U.S. at 636 (plurality opinion).[9] In this case, in contrast to *Vendo,* petitioners' primary complaint is not that the Plan's state court action was itself part of a scheme to violate ERISA; petitioners stress their contention that the Plan's state law claims are preempted and that the state court lacks jurisdiction over the Plan's ERISA claim. Petitioners' claim that Section 1132(a)(3) overrides the Anti-Injunction Act is therefore weaker than the claim that was rejected in *Vendo,* and *Vendo*'s holding is fully applicable here.

Section 1132(a)(2), the provision on which the district court based its jurisdiction to grant declaratory relief (Pet. App. 36a), authorizes district courts to grant "appropriate relief" to remedy breaches of fiduciary duty. Petitioners do not seek to remedy such a breach; to the contrary, they seek to defend against an alleged breach of their duties by obtaining a declaration that the state court lacks jurisdiction. Accordingly, there is no basis for concluding that Section 1132(a)(2) authorizes declaratory relief in this case. That is particularly so since the declaratory relief they seek would have the effect of an injunction. In *California* v. *Grace Brethren Church,* 457 U.S. 393, 408 (1982), the Court stated, with respect to the Tax Injunction Act, 28 U.S.C. 1341, that "because there is little practical difference between injunctive and declaratory relief,

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[9] The concurring Justices in *Vendo* thought that a state court proceeding might be enjoined under Section 16 if the state court action itself was part of a " 'pattern of baseless, repetitive claims' that are themselves being used as an anticompetitive device." 433 U.S. at 644. The dissenters stressed the district court's finding that the Vendo Company had used "litigation as a method of harassing and eliminating competition." *Id.* at 654.

we would be hard pressed to conclude that Congress intended to prohibit taxpayers from seeking one form of anticipatory relief against state tax officials in federal court, while permitting them to seek another." As the court of appeals concluded in *Texas Employers' Ins. Ass'n,* that logic applies in full to the Anti-Injunction Act. 862 F.2d at 507. The court of appeals therefore correctly concluded (Pet. App. 2a-3a) that declaratory relief should not be granted in this case.[10]

Petitioners also complain (Pet. 15-19) that although ERISA authorizes "ready access to the Federal Courts" (29 U.S.C. 1001(b)), that access has been denied to them. But in the future, persons like petitioners will have no difficulty removing cases such as this to federal court. In *Metropolitan Life Ins. Co.* v. *Taylor,* 481 U.S. 58, 67 (1987), the Court held that a claim for ERISA benefits was removable even though the complaint purported to raise only state law claims. In reaching that conclusion, the Court emphasized a statement in the Conference Report that actions seeking benefits " *'are to be regarded as arising under the laws of the United States.'* " 481 U.S. at 65 (quoting H.R. Conf. Rep. No. 1280, 93d Cong., 2d Sess. 327 (1974)). Since Congress also believed that it was "essential to provide for a uniform source of law" with respect to matters affecting fiduciary responsibility (H.R. Rep. No. 533 at 17), it is clear that actions alleging breaches of fiduciary duties are also removable, whether or not the complaint alleges a violation of ERISA.[11] Thus,

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[10] The question whether Section 2283 applies to actions for declaratory relief is not discussed in the petition.

[11] At the time the Plan's state court action was filed, petitioners could not have removed it because the state court lacked jurisdiction and, under the derivative jurisdiction rule, removal was not allowed. Congress has subsequently amended 28 U.S.C. 1441 to permit removal to a federal court of an action that is within exclusive federal

a fiduciary who is sued in state court on account of an alleged breach of his duties may now remove that action to federal court.[12]

2. Although there is some disagreement in the lower courts, review by this Court is not warranted at this time. As an initial matter, contrary to petitioners' claim (Pet. 19-20), there is no conflict between the decision below and the decision in *Marshall* v. *Chase Manhattan Bank,* 558 F.2d 680 (2d Cir. 1977). The injunction in that case was sought by the Secretary of Labor, not by a private party, and the court, relying on this Court's holding in *NLRB* v. *Nash-Finch Co.,* 404 U.S. 138, 146 (1971), said that "the general language of § 2283 [is] not intended to hamstring federal agencies in the utilization of federal courts to protect federal rights." 558 F.2d at 683. The *Marshall* decision is correct: the Anti-Injunction Act does not bar "a federal injunction of state court proceedings when the plaintiff in the federal court is the United States itself, or a federal agency asserting 'superior federal interests.' " *Mitchum,* 407 U.S. at 235-236; *Nash-Finch Co.,* 404 U.S. at 146; see also *Leiter Minerals, Inc.* v. *United States,* 352 U.S. 220, 225-226 (1957).

There is some tension between the decision below and the decision in *General Motors Corp.* v. *Buha,* 623 F.2d

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jurisdiction. See Judicial Improvements Act of 1985, Pub. L. No. 99-336, § 3(a), 100 Stat. 637, adding 28 U.S.C. 1441(e) (Supp. V 1987).

[12] Although petitioners could not have removed the Plan's action because it was filed before Congress revised the removal statute, they were not without a remedy—they could have moved for summary judgment on the ground that the state court lacked jurisdiction. That is the course that this Court has repeatedly directed parties such as petitioners to take. *Amalgamated Clothing Workers,* 348 U.S. at 518; *Atlantic Coast Line R.R.,* 398 U.S. at 294; *Chick Kam Choo,* 108 S. Ct. at 1691.

455, 458-459 (6th Cir. 1980), where the court held that the Anti-Injunction Act did not prevent a fiduciary of a pension plan from seeking to enjoin state court proceedings in which a judgment creditor sought to garnish the pension account of a participant in the plan. However, that case is not directly in conflict with the decision here. As the Third Circuit explained in *United States Steel Corp. Plan for Employee Ins. Benefits* v. *Musisko*, 885 F.2d 1170, 1178 (1989), it appears that the fiduciary in *Buha* was not a party to the state court garnishment action, which was brought against the bank that held the pension fund, and therefore could not raise its objection to garnishment in the state court. In that circumstance, it may be that ERISA's anti-alienation provision, 29 U.S.C. 1056(d)(1)—which prohibits the garnishment of pension accounts (see also 26 C.F.R. 1.401(a)-13)—"could be given its intended scope only by the stay of a state court proceeding." *Mitchum*, 407 U.S. at 238.[13] In any event, the facts of *Buha* are unlikely to recur. While it should have been clear to the judgment creditor even before the decision in *Buha* that it could not garnish a pension account, after that decision (which correctly held that the anti-alienation provision bars garnishment actions (623 F.2d at 460-463)), few creditors are likely to seek to invade such accounts.[14]

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[13] See *County of Imperial* v. *Munoz*, 449 U.S. 54, 59-60 (1980); *Hale* v. *Bimco Trading, Inc.*, 306 U.S. 375, 377-378 (1939) (exclusion from Anti-Injunction Act of "strangers to the state court proceedings").

[14] In *Guidry* v. *Sheet Metal Workers National Pension Fund*, No. 88-1105 (argued Nov. 29, 1989), the question presented is whether an exception to the anti-alienation provision should be inferred where a union treasurer embezzled from the union. It is undisputed in that case that the union could not garnish the petitioner's pension account merely because it is a judgment creditor; the respondent argues only that an exception is warranted in cases involving theft by union officers.

In *Gilbert* v. *Burlington Indus., Inc.*, 765 F.2d 320, 329 (2d Cir. 1985), aff'd, 477 U.S. 901 (1986), the court first "assum[ed] that the Anti-Injunction Act applies to administrative proceedings." It held that because common law causes of action are preempted by ERISA, a district court could nevertheless stay such a proceeding where the plaintiffs were seeking severance benefits from a plan subject to ERISA. 765 F.2d at 329. The court did not explain the basis for its ruling on the availability of an injunction, a ruling that is contrary to the decision below. However, as with *Buha,* we believe that the problem presented in *Gilbert* is unlikely to arise in the future. On appeal to this Court—in which the question presented was limited to the issue whether the court of appeals correctly held that ERISA preempts state law claims for employee benefits—the judgment of the court of appeals was affirmed. That affirmance, along with the more recent decision in *Pilot Life Ins. Co.* v. *Dedeaux,* 481 U.S. 41, 54 (1987) ("ERISA's civil enforcement remedies were intended to be exclusive"), makes entirely clear that the only remedies available in cases involving employee benefits are those provided in ERISA itself. Accordingly, plaintiffs should not seek to bring state law claims in cases involving employee benefit plans subject to ERISA and, if they do, the state courts can be trusted to hold them preempted. Moreover, under *Metropolitan Life Ins. Co.* v. *Taylor, supra,* a defendant could choose to remove such a case from state court.

The Third Circuit's recent decision in *Musisko* also counsels against review by this Court. *Musisko* was the first decision by a court of appeals that considered in detail the question presented here—the court in *Gilbert* devoted only one paragraph to the issue, and the court in *Buha* failed to consider this Court's decisions in *Amalgamated Clothing Workers* and *Atlantic Coast Line R.R.*

and did not have the benefit of the decision in *Chick Kam Choo*. The Third Circuit correctly held that a district court may not enjoin a state court proceeding on the ground that the plaintiffs' claims are preempted by ERISA. 885 F.2d at 1175-1178. In the unlikely event that questions such as the one presented here arise in the future, we think the lower courts will be guided by the analysis in *Musisko*.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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DECEMBER 1989

☆ U.S. GOVERNMENT PRINTING OFFICE: 1989—262-203/00650